

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF MICHIGAN
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NOTICE OF AMENDMENTS TO LOCAL RULES

On March 3, 2008, the Judges of the United States District Court for the Eastern District of Michigan approved amendments to its Local Rules, effective April 1, 2008:

- LR 5.3, Civil Material Filed Under Seal
- LR 26.2, Filing Discovery Material
- New LR 26.4, Protective Orders on Ground of Privilege or Other Protection

The approved amendments to LR 5.3 include the incorporation of the proposed amendments to LR 5.4, Sealed Settlement Agreements in Civil Cases.

Pursuant to Fed. R. Civ. P. 83, proposed amendments to these LR's were previously published for comment.

LR 5.3 Civil Material Filed Under Seal

(a) Sealing Items Authorized by Statute or Rule. When a statute or rule authorizes filing a document or other item under seal in a civil case, the item may be filed without a court order.

(1) A separate notice of filing under seal must be filed before filing an item under seal.

(2) The notice must include:

(A) a citation to the statute or rule authorizing the seal;

(B) an identification and description of each item submitted under seal;
and

(C) a statement establishing that the items are within the statute or rule authorizing the seal.

(b) Sealing Items Not Authorized by Statute or Rule.

(1) Except as provided by statute or rule, documents (including settlement agreements) or other items may be sealed in a civil case only by court order. A party or other person may not file or tender to the clerk an item proposed for sealing under this subrule unless the court enters an order permitting sealing.

(2) A party or other person seeking to file an item under seal in a civil case under LR 5.3(b) must either file and serve a motion or submit a proposed stipulated order to authorize sealing.

(A) A motion or stipulated order to authorize sealing must:

- (i) state the authority for sealing;
- (ii) include an identification and description of each item proposed for sealing;
- (iii) state the reason that sealing each item is necessary;
- (iv) state the reason that a means other than sealing is not available or unsatisfactory to preserve the interest advanced by the movant in support of the seal; and
- (v) have a supporting brief.

(B) When a motion to seal is filed, the movant must submit a proposed order with the motion. The proposed order submitted with the motion or a proposed stipulated order must state the reason the seal is required.

(c) Format Of Documents To Be Sealed.

(1) All documents must comply with LR 5.1(a).

(2) Only the germane portion of a filing may be sealed. For example, if the sealed item is an exhibit to a motion, response, or reply, only the exhibit may be sealed.

(d) Unsealing Documents. When the court orders an item unsealed, the clerk will make it publicly available as any other public document.

(e) Disposition. Unless the court directs otherwise, the court will transfer sealed material to the Federal Records Center for maintenance under the judiciary's Records Disposition Schedule six months after expiration of the last applicable appeal period.

COMMENT: Attorneys are cautioned that attempts to circumvent (a) may result in the imposition of sanctions.

Sealed settlement agreements are covered by LR 5.3(b)(1). Generally, except in extraordinary circumstances, the sealing of settlement agreements is disfavored.

Protective orders are covered under LR 26.4.

Other material provided by statute, e.g., *Qui Tam* cases, are not covered by this rule.

Documents filed electronically must comply with the Court's ECF Policies and Procedures (Appendix ECF to these rules).

LR 26.2 Filing Discovery Material

(a) A party or other person may not file discovery material specified in Fed.R.Civ.P. 5(d)(1) except:

(1) when it provides factual support for a motion, response or reply. The party or other person relying on the material must file only the germane portion of it as an exhibit or attachment to the motion, response, or reply.

(2) when it is read or otherwise used during a trial or other proceeding. The party or other person relying on the material must file it at the conclusion of the trial or other proceeding in which it was used or at a later time that the court permits.

(3) on order of the court.

(4) if discovery material not previously filed is needed for an appeal, the party or other person with custody of the discovery material must file it either by stipulation or court order.

(b) Deposition material must be filed in written form. A written transcript of an audio taped or videotaped deposition will be accepted.

(c) The originating party or other person must maintain discovery material for six months after expiration of the last applicable appeal period, or until the court directs otherwise.

(d) If the court orders filing, the party or other person with custody of the discovery material must file it within 14 days of service of the order.

COMMENT: Documents filed electronically must comply with the Court's ECF Policies and Procedures (Appendix ECF to these rules).

LR 26.4 Protective Orders on Ground of Privilege or Other Protection

(a) Motions for Protective Orders.

(1) This rule governs motions for protective orders based on a claim that information is privileged or subject to protection. It does not apply to a motion for a protective order on other grounds. The motion must:

(A) state the claim that information, otherwise discoverable, is either privileged or subject to protection, and

(B) without revealing privileged or protected information, describe the nature of the documents, communications, or things not produced or disclosed, to enable the court to assess application of the privilege or protection.

(2) A party or other person may not file or tender to the clerk an item proposed for sealing under a protective order unless the court enters a protective order authorizing sealing.

(b) Proposed Orders. The movant must submit as an exhibit to the motion a proposed order that states that the information is either privileged or subject to protection and describes the type of information to be protected.

(c) Filing Protected Material. If a motion for protective order is granted, protected material shall not be filed with the Clerk except:

(1) when it provides factual support for a motion, response or reply. The party or other person relying on the material must file only the germane portion of it as an exhibit or attachment to the motion, response or reply.

(2) if it is read or otherwise used during a trial or other proceeding. The party or other person relying on the material must file it at the conclusion of the trial or other proceeding in which it was used or at a later time that the court permits.

(3) on order of the court.

(4) if privileged or protected material not previously filed is needed for an appeal, the party or other person with custody of the material must file it either by stipulation or court order.

(d) Sealing, Unsealing, and Disposition of Material. LR 5.3(d)-(e) govern the method of filing sealed items, unsealing, and disposition of sealed material.

COMMENT: Sealed settlement agreements are covered under LR 5.3(b)(1).

Filing of depositions under seal is covered under LR 26.2(b).

Stipulated protective orders must be submitted as directed in the ECF Policies and Procedures (Appendix ECF to these rules).

The retention of protected material is addressed in Appendix ECF.